

MINUTES OF REGULAR MEETING
SUGAR CITY COUNCIL
THURSDAY, JANUARY 22, 2009

Presiding: Mayor Glenn W. Dalling
Meeting Convened at 6:30 p.m.
Prayer: Mayor Dalling
Pledge of Allegiance

Present: Mayor Dalling; Sharon L. Bell, Clerk; Marcie A. Smith, Treasurer; Councilmembers Harold Harris, Bruce King, Brad Orme and Lamont Merrill; Brian Hawkes, Ninette Galbraith, Vaun Waddell and Jesse Brown, Planning & Zoning; Nathan Sunderland, *Standard Journal*; Dana Izatt; Brian Hadlock; Alan English; Eddie Pincock; Sharee Palmer; Jan Gallup; Scott Hancock; Kire Madsen; Jeff Christensen; Jose Nevarez; Nathaniel Christensen; Nicholas Christensen; and Jordan Clinger. Councilmember Harris was excused for the last part of the meeting.

The Mayor asked if there were any corrections to the minutes of the regular meeting held on January 8, 2009. Each councilmember had a copy of said minutes prior to the meeting. It was moved by Councilmember Harris and seconded by Councilmember Merrill to accept said minutes; motion carried.

PLANNING & ZONING REPORT: P&Z Chairman Brian Hawkes addressed the council.

P&Z Officers: Brian reported that he was voted chairman for another year and Ninette Galbraith was voted secretary.

Old Farm Estates Development Agreement: Brian reported that he sent an e-mail to the City Council this week with P&Z's recommendation pertaining to the Old Farm Estates Development Agreement. Commissioners feel that the purpose for signing the development agreement is past for two reasons: (1) the utilities are already installed; and (2) note 17 says, "This agreement would be binding on all subsequent phases." P&Z wants subsequent phases of the development to be subject to new sections of the city code that are in place at the time those phases go in. Old Farm would need to start with a new development agreement, preliminary plat, final plat and master plan. P&Z proposes that the city write to officials of Old Farm Estates, suggesting that we just start clean with the next phase since there is no need at this time for the development agreement.

Old Farm Estates Covenants, Conditions, and Restrictions: P&Z commissioners looked at this document and do not have any recommendations one way or the other. Two suggested changes from the council were discussed: (1) under 3.2 Election and Term, the third line down should say "first" rather than "last"; and (2) under 2.3 Site Location, remove "porches" in order for the covenants to conform with city code.

Public Hearings held 12-18-08:

Proposed Transportation Map and Land Use Map: Brian reported that these maps have already been through three public hearings and asked that the City Council approve them without further public hearings.

Title 10: Brian discussed Title 10 revisions and additions. Some of them dealt with public hearings and decision time lines, and also with plat application time lines. If phases are more than two years apart, a new application must be made. P&Z recommends that the City Council approve the proposed Title 10 revisions and additions without further public hearing.

Title 9: Brian discussed Title 9 revisions and additions, which dealt with the following: (1) variation in lot sizes in subdivisions; (2) definition of pawn shop and sexually oriented/adult business; and (3) regulating and limiting adult entertainment businesses within city limits. Councilmember King reminded the council that he was initially against allowing for adult businesses anywhere in Sugar City. But given Supreme Court rulings identified by the Planning and Zoning Commission that ban a city from prohibiting adult businesses, he now relaxes this objection, although he suggests the city send a letter to the U.S. Supreme Court – with copies to the Idaho Supreme Court, Idaho Attorney General, Rexburg City officials, local newspapers and the Statements page of the city's Web site – raising concerns about the rulings. He presented his concerns pertaining to these Supreme Court rulings and read a proposed letter to the high court (see his presentation to the council appended to these minutes as Attachment 1). P&Z recommends that the City Council approve the proposed Title 9 revisions and additions without further public hearing.

DANA IZATT – AUDIT REPORT: Dana Izatt of Searle, Hart & Associates PLLC addressed the council, explaining the Independent Auditors' Report and the Management Report for the year ended September 30, 2008. Discussion was had. Mr. Izatt reported that the city is in good financial shape. **MOTION:** It was moved by Councilmember Orme and seconded by Councilmember King to accept said audit as presented; motion carried.

DISCUSSION OF DOG ORDINANCE AND SET PUBLIC HEARING: The mayor proposed that action on the dog ordinance be postponed for two weeks to give the City Council time to review the resolution setting fines, at which time a public hearing date will be set. Sharon will get a copy of the resolution setting dog fines to the council for their review.

7:30 p.m. Councilmember Harris was excused.

**DISCUSSION OF ORDINANCES NO. 151 AND NO. 179 AND RESOLUTION 97-3
“PEDDLER, SOLICITOR, TRANSIENT AND ITINERANT MERCHANT” LICENSES:**
After discussion, it was decided that this matter be postponed for two weeks in order to receive input from the city attorney.

The mayor entertained a motion to go into executive session.

EXECUTIVE SESSION:

8:05 p.m. It was moved by Councilmember King and seconded by Councilmember Merrill, pursuant to Idaho Code 67-2345(1)(a), (b) and (f) that we move into executive session to discuss hiring, personnel and possible litigation. The mayor called for a roll call vote:

Those voting aye: Councilmembers King, Orme and Merrill

Those voting nay: None

Thereupon the mayor declared the motion passed.

Discussion during the executive session was on hiring, personnel and possible litigation.

8:25 p.m. The executive session ended and the regular council meeting reconvened.

MOTION TO APPOINT CITY ATTORNEY: The mayor reported his appointment of William Forsberg as Sugar City's attorney, subject to confirmation by the City Council and entertained a motion to approve this appointment. It was moved by Councilmember Orme and seconded by Councilmember King to confirm the mayor's appointment of William Forsberg as Sugar City's attorney; motion carried.

DECISION ON P&Z RECOMMENDATIONS ON PUBLIC HEARINGS HELD 12-18-08:

Title 10 revision/additions and Title 9 revision/additions:

MOTION: It was moved by Councilmember Orme and seconded by Councilmember Merrill to approve the proposed revisions and/or additions to Title 9 and Title 10, as recommended by the Planning and Zoning Commission, with the addition of a diagram yet to be included by P&Z in Title 10; motion carried unanimously.

Proposed Comprehensive Plan Transportation Map and Proposed Comprehensive Plan Land Use Map:

MOTION: It was moved by Councilmember King and seconded by Councilmember Merrill to set a public hearing on the transportation map for 6:30 p.m. on Thursday, February 12, 2009, and to set a public hearing on the land use map for 6:45 p.m. on Thursday, February 12, 2009; motion carried unanimously.

DISCUSSION OF RECORDS RETENTION – RESOLUTION AND RECORDS

INVENTORY: City Clerk Sharon L. Bell led a discussion on the records retention resolution and records inventory. The mayor assigned Sharon to provide the documents to Attorney Forsberg for his review.

DISCUSSION OF TITLE 1 AND SET PUBLIC HEARING: Councilmember King suggested adding to title 1-5-2 (B) that the mayor may declare a natural disaster, which was supported by the council.

MOTION: It was moved by Councilmember King and seconded by Councilmember Orme to set a public hearing on the full revision to Title 1 for 6:30 p.m. on Thursday, February 26, 2009; motion carried.

DEPARTMENT REPORTS:

COUNCILMEMBER HARRIS:

Bridge in Business Park: In Harold's absence, the mayor reported that the Business Park bridge was set this past week. Crews will finish constructing the bridge and its approaches in the spring.

COUNCILMEMBER ORME: Brad reported the annual breakfast couldn't be done as an Eagle Project anymore. He suggested the city appoint a committee to handle the project.

COUNCILMEMBER KING:

Title 9: Regarding the aforementioned letter to the Supreme Court, Bruce said he would send copies of it to the mayor, council and commission for their individual evaluation and

approval before sending the letter to the Supreme Court.

Old Farm Estates Covenants, Conditions, and Restrictions: Discussion was had on two proposed changes, which the council supported. So the mayor can provide a copy of this slightly modified document to Attorney Forsberg for his review.

COUNCILMEMBER MERRILL: Lamont reported that the second booster pump malfunctions at times.

MAYOR'S BUSINESS:

Old Farm Estates Development Agreement: The mayor said Attorney Forsberg was given the information yesterday and presented us with a written memo. Attorney Forsberg suggested the City Council table approval of the most recent draft of the development agreement, pending his full analysis of the document, including perhaps a discussion of points with the developer's counsel.

MOTION TO TABLE OLD FARM ESTATES DEVELOPMENT AGREEMENT UNTIL ATTORNEY'S ANALYSIS IS COMPLETE: It was moved by Councilmember King and seconded by Councilmember Merrill to table approval of the most recent draft of the proposed development agreement with Old Farm Estates, pending Mr. Forsberg's full analysis of the agreement, including perhaps a discussion of points with the developer's counsel; motion carried.

With regard to the suggested letter from P&Z advising Old Farm Estates that phase 1 is complete so there is no reason to sign the development agreement, the mayor suggested putting the letter on hold until our attorney has more time to study the agreement.

The meeting adjourned at 9:30 p.m.

Signed: _____
Glenn W. Dalling, Mayor

Attested: _____
Sharon L. Bell, Clerk

Thursday, January 22, 2009

Mayor and Council:

In light of high court rulings on regulating adult businesses, I relax my earlier objections to modifying our code and accept the commission's draft of a protective ordinance for Sugar City.

These Supreme Court rulings, one of which bans municipalities from prohibiting adult entertainment businesses, leave us little choice but to pass regulation consistent with what the current legal climate suggests we can expect to defend.

But I submit to you that our responsibility does not end there. Having sworn to uphold the Constitution, we have a responsibility to speak up when judges misinterpret or misapply its provisions, even judges on the Supreme Court.

I propose we send the following letter to the U.S. Supreme Court, with copies to the Idaho Supreme Court, Idaho attorney general, Rexburg City officials, our local newspapers, and the Statements page of our Web site.

January 29, 2009

To:

Chief Justice John G. Roberts, and Associate Justices – John Paul Stevens, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel A. Alito, Jr. – Supreme Court of the United States, One First Street N.E., Washington, D.C. 20543

Dear Justices:

Thank you for your hard work on the high court. We know it is a big job. Your decisions set the course of this nation.

That is what worries us at times.

Our attorney advises us against prohibiting all adult entertainment businesses in our town. He says the court has determined it is unconstitutional.

Apparently justices decided in *Schad v. Mount Ephraim* (452 U.S. 61, 1981) that municipalities must allow for adult businesses on the grounds that the Free Speech Clause of the First Amendment protects such expression.

We disagree.

Our study of the First Amendment and of the ideology that created it convinces us that the Framers merely intended to protect political and religious speech.

In fact, we join with many others who hold that there is no constitutional justification for unlimited free “speech.”

We unite with Chief Justice Warren E. Burger and Justice William Rehnquist in their dissent from the majority in *Schad v. Mount Ephraim*:

(Quote) “. . . The towns and villages of this Nation are not, and should not be, forced into a mold cast by this Court. Citizens should be free . . . to shape their community so that it embodies their conception of the ‘decent life.’ This will sometimes mean deciding that certain forms of activity . . . will not be allowed.

“. . . To say that there is a First Amendment right to impose every form of expression on every community . . . is sheer nonsense. To enshrine such a notion in the Constitution ignores fundamental values that the Constitution ought to protect.” [452 U.S. 61, 89]
(Unquote)

This reasoning makes perfect sense to us.

We invite you to reconsider the court’s ruling in this case. Indeed, we urge you to reconsider other rulings that have “. . . severely handicap[ped] the community’s efforts to retain a morally and aesthetically satisfying environment” (Robert Bork, “The Sanctity of Smut,” *Wall Street Journal*, April 23, 2002, p. A22).

The freedoms of America’s communities, not to mention the nation’s moral health, depend on it.

Sincerely,

Mayor, City Council, Planning and Zoning Commission

Closing thoughts to the mayor and council:

Some may snicker at the notion that a letter from a small town in Idaho will make a difference in Washington, D.C. But, according to my research, the Supreme Court justices read their mail – and thoughtful opinion always carries weight with fair-minded people.

One thing is certain, unwise legal trends are unlikely to change if no one challenges them.

In my mind, this council’s responsibility runs deeper than the immediate concerns of Sugar City. I suggest we are duty-bound to help right the ship of state at all levels of government, having sworn to do so.

After all, the destinies of local, state, and federal government are intertwined.

Thank you.

Bruce P. King